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**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**

**CHAPTER 103**

Statutory Authority: 1976 Code Section 58-3-140, 58-3-60, and 58-41-20

103-811.5 Role of the Qualified Independent Third-Party Consultant and Expert and the Commissioners' Reliance on the Contents of the Qualified Independent Third-Party Consultant and Expert's Report.

**Preamble:**

The Public Service Commission of South Carolina proposes to add a regulation which provides a process for the Commission to engage qualified independent third-party consultants and experts. The proposed regulation is necessary to provide guidance as to the role and responsibilities of a qualified independent third-party consultant and expert and the Commissioners' reliance on the qualified independent third-party consultant and expert's report. The Notice of Drafting regarding this regulation was published on December 27, 2019, in the *State Register*, Volume 43, Issue 12.

**Section-by-Section Discussion**

103-811.5. This section, when it becomes effective, addresses a qualified independent third-party consultant and expert's role and responsibilities in cases before the Commission and the Commissioners' reliance on the qualified independent third-party consultant and expert's report.

**Notice of Public Hearing and Opportunity for Public Comment:**

Interested persons may submit written comments to the Public Service Commission, Clerk's Office, 101 Executive Center Drive, Suite 100, Columbia, South Carolina 29210. Please reference Docket Number 2019-362-A. To be considered, comments must be received no later than 4:45 p.m. on Friday, October 2, 2020. Interested members of the public and the regulated community are invited to make oral or written comments on the proposed regulation at a virtual public hearing to be conducted by the Public Service Commission on Wednesday, November 4, 2020, at 10:00 a.m.

**Preliminary Fiscal Impact Statement:**

The Commission anticipates utilizing its existing resources to implement the proposed regulation. Other than the costs the Commission will incur to retain and compensate a qualified independent third-party consultant, the Commission anticipates utilizing its existing resources to execute or effectuate the provisions of the proposed regulation.

**Statement of Need and Reasonableness:**

This statement of need and reasonableness was determined pursuant to S.C. Code Ann. Section 1-23-115(C)(1) through (3) and (9) through (11).

**DESCRIPTION OF REGULATION:**

103-811.5. Role of the Qualified Independent Third-Party Consultant and Expert and the Commissioners' Reliance on the Contents of the Qualified Independent Third-Party Consultant and Expert's Report

Purpose: Act 62 of 2019, or the South Carolina Energy Freedom Act, was signed by Governor Henry McMaster on May 16, 2019. S.C. Code Ann. Section 58-41-20 (I) states, "The commission is authorized to employ, through contract or otherwise, third-party consultants and experts in carrying out its duties

under this section, including, but not limited to, evaluating avoided cost rates, methodologies, terms, calculations, and conditions under this section. The commission is exempt from complying with the State Procurement Code in the selection and hiring of a third-party consultant or expert authorized by this subsection. The commission shall engage, for each utility, a qualified independent third party to submit a report that includes the third party's independently derived conclusions as to that third party's opinion of each utility's calculation of avoided costs for purposes of proceedings conducted pursuant to this section. The qualified independent third party is subject to the same ex parte prohibitions contained in Chapter 3, Title 58 as all other parties. The qualified independent third party shall submit all requests for documents and information necessary to their analysis under the authority of the commission and the commission shall have full authority to compel response to the requests. The qualified independent third party's duty will be to the commission. Any conclusions based on the evidence in the record and included in the report are intended to be used by the commission along with all other evidence submitted during the proceeding to inform its ultimate decision setting the avoided costs for each electrical utility. The utilities may require confidentiality agreements with the independent third party that do not impede the third-party analysis. The utilities shall be responsive in providing all documents, information, and items necessary for the completion of the report. The independent third party shall also include in the report a statement assessing the level of cooperation received from the utility during the development of the report and whether there were any material information requests that were not adequately fulfilled by the electrical utility. Any party to this proceeding shall be able to review the report including the confidential portions of the report upon entering into an appropriate confidentiality agreement. The commission and the Office of Regulatory Staff may not hire the same third-party consultant or expert in the same proceeding or to address the same or similar issues in different proceedings.”

The proposed regulation provides, in part, further guidance on the consultant and expert's role to the Commission; the consultant and expert's acknowledgement of ex parte communications law; the consultant and expert's proposed procedural schedule for the timing of the development and issuance of its report; and the weight each Commissioner may give the consultant and expert's report.

Legal Authority: S.C. Code Ann. Section 58-3-140, 58-3-60, and 58-41-20

Plan for Implementation: The proposed regulation will take effect upon approval by the General Assembly and publication in the *State Register*. The Commission, upon the effective date of the proposed regulation, will enforce the provisions of it.

#### DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The proposed Regulation 103-811.5 is needed and is reasonable as it provides directions for all stakeholders related to the consultant and expert's role in a pending docket and provides pertinent procedural guidance for issues such as timing related to the issuance of the consultant and expert's report and the potential substance of the consultant and expert's report.

#### DETERMINATION OF COSTS AND BENEFITS:

The Commission opines that it can absorb the administrative process expenditures related to accomplishing the provisions of the proposed regulation. The Commission initially expended \$175,000 to execute its first qualified independent third-party consultant and expert contract hired pursuant to S.C. Code Ann. Section 58-41-20 (I) which requires the Commission to engage such consultants and experts.

#### UNCERTAINTIES OF ESTIMATES:

None.

#### EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None.

#### DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

The regulation will have no detrimental effect on the environment or public health if the regulation is not implemented.

#### STATEMENT OF RATIONALE:

The purpose for Regulation 103-811.5 is to document the role of qualified independent third-party consultants and experts and the Commissioners' reliance on the contents of the qualified independent third-party consultant and expert's report. Adoption of this Regulation will result in a regulation which outlines the role of qualified independent third-party consultants and experts and how the Commission utilizes the qualified independent third-party's consultant and expert's report. There was no scientific or technical basis relied upon in the development of this regulation.

~~Indicates Matter Stricken~~

Indicates New Matter

#### Text:

##### 103-811.5 Role of the Qualified Independent Third-Party Consultant and Expert and the Commissioners' Reliance on the Contents of the Qualified Independent Third-Party Consultant and Expert's Report.

A. The qualified independent third-party consultant and expert is subject to the ex parte prohibitions contained in Chapter 3, Title 58 of the South Carolina Code, but the qualified independent third-party consultant and expert is not prohibited from communicating with the Commission and with the Commission Staff. The qualified independent third-party consultant and expert shall submit all requests for documents and information necessary to conduct its analysis under the authority of the Commission, and the Commission shall have full authority to compel responses from parties to the request. The qualified independent third-party consultant and expert's duty will be to the Commission. No communications between the qualified independent third-party consultant and expert and any party regarding an issue before the Commission should be communicated without notice to all parties to the proceeding.

B. All communications between any party and the qualified independent third-party consultant and expert must be communicated to all parties contemporaneous with the original communication.

C. Upon retention by the Commission, the qualified independent third-party consultant and expert shall sign an acknowledgement of the ex parte prohibitions in Chapter 3, Title 58 of the South Carolina Code.

D. The qualified independent third-party consultant and expert shall submit a proposed procedural schedule for the timing of the development and issuance of its final report and its intended approach to complying with the ex parte prohibition provisions in carrying out its responsibilities to the Commission.

E. The role of the qualified independent third-party consultant and expert's duty is to advise the Commission and its role includes modeling its own data inputs and calculations via an independent analysis of an electrical utility's avoided cost. The role of the qualified independent third-party consultant and expert is not to rely solely on inputs from the utility or any other party so as to be constrained to working from the utility's or any other party's avoided cost data, inputs, and assumptions.

F. All parties shall receive the final report at least ten (10) days prior to the Commission's vote in the proceeding. Parties must be given a reasonable opportunity to respond in writing to the final report prior to the Commission's vote in the proceeding. The qualified independent third-party consultant and

expert's duty is to the Commission, and the qualified independent third-party consultant and expert is not subject to responding to discovery, may not be deposed, will not be cross-examined or called to testify before the Commission.

G. The final report shall be included in the record and considered evidence along with all other evidence in the proceeding and will be given the appropriate weight as the Commission may with any evidence in the record.